

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

HENRY SALAZAR,

Plaintiff,

v.

SELENE FINANCE, LP; U.S. BANK
NATIONAL ASSOCIATION AS LEGAL TITLE
TRUSTEE FOR BCAT 2016-18TT; and PEDRO
TAVERAS,

Defendants.

C.A. No. 1:18-cv-00495-WES-PAS

**DEFENDANTS SELENE FINANCE LP AND U.S. BANK, AS TRUSTEE'S OBJECTION
TO PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO AMEND**

Defendants Selene Finance LP and U.S. Bank National Association as Legal Title Trustee for BCAT 2016-18TT ("Defendants") object to and oppose Plaintiff, Henry Salazar's ("Plaintiff") Motion for Extension of Time filed for purpose of further extending the time in which Plaintiff can file an Amended Complaint.

By July 8, 2019 Text Order, this Court denied Defendants' Motion to Dismiss without prejudice while at the same time granting Plaintiff's Motion for Leave to File (ECF 16) and ordering that Plaintiff file the amended complaint within 2 weeks, or by July 22. Plaintiff's Memorandum of Law in support of Motion to Allow Supplemental Memorandum demonstrates that Plaintiff requested leave of Court "to file an amended complaint alleging the same defects as in Thompson relating to the issue of the notice of the limitations on the right to reinstate." (ECF 16-1 at p. 3.) Defendants have requested reconsideration of the Court's July 8, 2019 order on grounds that the First Circuit Court of Appeals has vacated the judgment and withdrawn the opinion issued in *Thompson v. JPMorgan Chase Bank, N.A.*, C.A. No. 18-1559. (ECF 23.)

Plaintiff's Motion for Extension appears to concede that *Thompson* cannot support any claim made in this action. (ECF 24 at p. 1.)

Now, however, Plaintiff asserts issues other than *Thompson* to be briefed in the forthcoming Amended Complaint. The Federal Rules of Civil Procedure require Plaintiff to seek leave of Court in order to amend. Fed. R. Civ. P. 15(a)(2). It is within the discretion of this Court to grant or deny such a motion. *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962). In *Foman*, the Supreme Court identified a number of reasons for the court to deny a motion to amend, which include "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amended, futility of amendment, etc." 371 U.S. at 182, 83 S.Ct. 227. "A motion to amend a complaint may be denied as futile if the 'complaint, as amended, would fail to state a claim upon which relief could be granted.'" *Bond Opportunity Fund II, LLC v. Heffernan*, 340 F.Supp.2d 146, 156 (D.R.I. 2004) (quoting *Glassman v. Computervision Corp.*, 90 F.3d 617, 623 (1st Cir. 1996)). In order to determine whether an amendment would be futile, the court applies the same standard as it would apply to a motion dismiss under Fed. R. Civ. P. 12 (b)(6). *Id.*

Plaintiff's Motion for Extension attempts to shortcut and short-circuit the procedure for amending this action beyond the previously stated grounds of filing a complaint on the same defects as in *Thompson*. On procedure alone, the Court should deny the Motion for Extension, grant Defendants' Motion for Reconsideration now that Plaintiff concedes *Thompson* cannot apply, and hear Defendants on their Motion to Dismiss the complaint.

Respectfully submitted,

SELENE FINANCE LP; AND U.S. BANK
NATIONAL ASSOCIATION, NOT IN ITS
INDIVIDUAL CAPACITY, BUT SOLELY
AS LEGAL TITLE TRUSTEE FOR BCAT
2016-18TT,

By Their Attorneys,

/s/ Samuel C. Bodurtha

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Dated: August 1, 2019

CERTIFICATE OF SERVICE

I, Samuel C. Bodurtha, hereby certify that the documents filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as nonregistered participants on August 1, 2019.

/s/ Samuel C. Bodurtha

Samuel C. Bodurtha